

JAY SMITH)	
Claimant)	
VS.)	
)	Docket No. 237,676
CORNEJO & SONS, INC.)	
Respondent)	
AND)	
)	
WAUSAU INSURANCE COMPANY)	
Insurance Carrier)	

Claimant worked for respondent from April 29, 1997, to December 23, 1997, doing hazardous material clean-up. On May 8, 1997, claimant submitted to a random urine test which showed no measurable cadmium in claimant's urine. Claimant was terminated as of December 23, 1997. Several attempts were made to schedule an exit physical but, before that could be done, claimant submitted, on June 30, 1998, to a pre-employment physical with another company. The pre-employment physical included a urinalysis. The

urinalysis showed a high cadmium level. Claimant was advised of the high cadmium level on July 13, 1998, which disqualified him from the job. Claimant filed this claim on October 16, 1998.

K.S.A. 44-5a17 requires that "written notice" be given within 90 days from disablement. Disablement is defined in K.S.A. 44-5a04 as the event of becoming unable to perform the work the employee was performing in the last occupation in which he/she was injuriously exposed. The Board finds, as respondent has argued, claimant became disabled as of July 13, 1998. He did not give notice within 90 days as required and the claim should, therefore, be denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge John D. Clark on January 7, 1999, should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Douglas C. Hobbs, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director